

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SHIRLEY RADABAUGH

Plaintiff,

- against -

CLAY TURNER REALTY GROUP, LLC

Defendant.

Docket No. 1:20-cv-00058-JRH-BKE

DECLARATION OF SHIRLEY RADABAUGH

I, SHIRLEY RADABAUGH, hereby swear under the penalty of perjury that the following is true and correct to the best of my personal knowledge:

1. I am the plaintiff in this action.
2. I respectfully submit this declaration in support of my application for an award of statutory damages against defendant Clay Turner Realty Group, LLC (“Defendant”) pursuant to 17 U.S.C. § 504(c).
3. I am the author and copyright claimant of the registered photograph of a train depot in Aiken, South Carolina that is the subject of this litigation (the “Photograph”). Attached as Exhibit A is a true and correct copy of the Photograph.
4. I am in possession of a copyright registration certificate, bearing no. VA 2-163-245, with the effective date of July 15, 2019 (the “245 Registration”). Attached as Exhibit B is a true and correct copy of the 245 Registration certificate.
5. I respectfully elect to recover statutory damages in this action under 17 U.S.C. § 504(c).

6. It appears that subsequent to the effective date of the 245 Registration, Defendant displayed the Photograph in an article on its commercial website at URL <http://turnerealty.us/aiken> (the “Infringing URL”). Attached as Exhibit C is a true and correct copy of a screenshot from Defendant’s website showing where the Photograph was prominently displayed. The evidence submitted of the Infringing URL was acquired on April 21, 2020, subsequent to the effective date of the 245 Registration.

7. Moreover, the website Wayback Machine demonstrates that the earliest date the Infringing URL was recorded is August 13, 2020, subsequent to the effective date of the 245 Registration. Attached as Exhibit D is a true and correct copy of the Wayback report.

8. For the reasons set forth in paragraph 6 and 7 above, I harbor a good faith belief that Defendant published the Photograph to the Infringing URL subsequent to the effective date of the 245 Registration, thereby qualifying my claim for statutory damages under 17 U.S.C. § 412. Defendant has not produced any evidence to the contrary.

9. The Photograph in this case was never licensed to any third parties in exchange for a fee. Instead, physical prints of the Photograph were made available via Fine Art America, www.fineartamerica.com, and through a local Artisan market in Aiken. I also distributed the Photograph for on-line use to third parties www.scriptureproject.org and www.visitsc.com, however no licensing fees were charged to these third parties.

10. Although there is no licensing fee history for the Photograph at issue, I estimate that I would have been reasonably entitled to charge up to \$2315.00 for use of the Photograph in the manner used by Defendant.

11. As evidence to support this claim, I respectfully submit as a benchmark license fee for a similar photograph of a traditional train station in small town America that is available

for license on the website of leading stock photography agency Getty Images, Inc. (“Getty”). Attached as Exhibit E is a true and correct copy of the benchmark license fee, showing that a similar photograph license on Getty in the amount of \$2315.00 for use in an editorial style article intended to indirectly promote a product or service the United States up to three years duration in the industry of travel tourism.

12. It is my understanding that under applicable law, statutory damages may be awarded up to five (5) times the amount of the lost licensing fee. I therefore seek statutory damages to be awarded against Defendant in the amount of \$11,575.00.

13. At the appropriate time, I also intend to seek my reasonable attorneys’ fees and costs under 17 U.S.C. § 505

Dated: July 7, 2021
Aiken, South Carolina

Shirley Radabaugh

SHIRLEY RADABAUGH